

**BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues  
Against:

**MARIO YEYSEN VASQUEZ, aka MARIO  
NAVA,**

Field Representative License Applicant,  
  
Respondent.

Case No. 2016-6

OAH No. 2015071208

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is  
hereby adopted by the Structural Pest Control Board, Department of Consumer Affairs,  
as its Decision in this matter.

The Decision shall become effective on February 21, 2016.

IT IS SO ORDERED January 22, 2016.

  
\_\_\_\_\_  
FOR THE STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

MARIO YEYSEN VASQUEZ,  
aka MARIO NAVA,

Field Representative License Applicant,

Respondent.

No. 2016-6

OAH No. 2015071208

**PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 14, 2015, in San Diego, California.

Lauro A. Paredes, Deputy Attorney General, Department of Justice, represented complainant, Susan Saylor, Registrar/Executive Officer, Structural Pest Control Board, Department of Consumer Affairs, State of California.

Mario Yeysen Vasquez, respondent, represented himself.

The matter was submitted on October 14, 2015.

**FACTUAL FINDINGS**

*Background*

1. On April 8, 2015, respondent signed and submitted to the board an application for field representative's license. On May 8, 2015, the board denied respondent's application based on his criminal conviction history. Respondent appealed the decision.

2. On July 14, 2015, complainant signed the statement of issues alleging two causes for denying the application: respondent had a conviction for a crime that is substantially related to the qualifications, duties, and functions of a field representative, and respondent made a false statement of fact in his application.

### *2013 Conviction for Theft*

3. On February 14, 2013, in the Superior Court of California, County of San Diego, respondent pleaded guilty and was convicted of violating Penal Code section 484, subdivision (a), theft, a misdemeanor. The court placed respondent on summary probation for three years; sentenced respondent to serve 28 days in jail with pre-custody credit of 28 days; and ordered respondent to pay various fines and fees.

On June 29, 2015, the court terminated respondent's probation and dismissed the conviction pursuant to Penal Code section 1203.4.

4. The circumstances of the offense were determined from a report from the San Diego Police Department.<sup>1</sup> On February 1, 2013, respondent took a jacket from a store without paying for it. When a loss prevention officer attempted to grab the jacket from respondent's hand, respondent swatted or slapped the officer's hands and fled the store on foot. The loss prevention officer gave chase, a mall security officer detained respondent.

### *Respondent's License Applications*

5. On March 10, 2014, respondent submitted an application to take the structural pest control field representative examination. Question 15 of the application asked whether the applicant has ever been convicted of a felony or a misdemeanor other than minor traffic infractions. Respondent answered, "yes," and in explanation wrote, "I was shoplifting."

6. On June 2, 2014, September 14, 2014, and January 26, 2015, respondent submitted applications to re-take the examination. These applications did not contain questions about the applicant's criminal history.

7. On April 6, 2015, respondent passed the examination. On April 13, 2015, he submitted an application for a field representative's license. Question 16 asked whether the applicant has ever been convicted of any offense. Respondent checked the box "no."

---

<sup>1</sup> The police report was received under *Lake v. Reed* (1997) 16 Cal.4th 448, which considered what kinds of hearsay evidence are admissible under Government Code section 11513 in an administrative proceeding. That opinion concluded that an officer's direct observations memorialized in the officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The opinion concluded that admissions by a party memorialized in such a report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the Supreme Court concluded that other hearsay statements set forth in the police officer's report could be used to supplement or explain other evidence, but they were not sufficient, by themselves, to support a factual finding, unless the hearsay evidence would be admissible over objection in civil actions.

### *Respondent's Testimony*

8. Respondent is 22 years old. He has a seven-month-old child. Respondent accepted full responsibility for his prior misconduct. He explained that at that time he associated with the wrong people. He understood why the board would be concerned about his criminal history but testified that he is a different person now. Soon after his conviction he returned to school and completed his GED. In November 2013 he began working as an office manager at The Works Termite Inc. He is seeking his field representative license so he can make better money to support his family.

Respondent testified that he disclosed the conviction in the first application he submitted to the board. He admitted that he did not disclose the conviction in the second license application he submitted. He claimed that he did not disclose the conviction in the second application because he thought he did not need to since he previously disclosed it in the original application.

### LEGAL CONCLUSIONS

#### *Relevant Statutory Authority*

1. Business and Professions Code section 480 provides in part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

[¶] . . . [¶]

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

[¶] . . . [¶]

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

2. Business and Professions Code section 8649 provides;

Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.

*Evaluation*

3. Cause does not exist to deny respondent's application for a pest control field representative's license pursuant to Business and Professions Code sections 8649 and 480, subdivision (a)(1) and (a)(3)(A). Although respondent was convicted of a substantially related crime at the time of his application, his conviction has since been dismissed pursuant to Penal Code section 1203.4. Under Business and Professions Code section 480, subdivision (c), this conviction cannot serve as a sole basis for denial of the application.

4. Cause does not exist to deny respondent's application for a pest control field representative's license pursuant to Business and Professions Code section 480, subdivision (d).

On his license application, respondent checked that he had not been convicted of a misdemeanor, when in fact he had suffered a misdemeanor petty theft conviction. That statement was false. However, respondent's testimony that he did not believe he had to disclose the conviction because he had already disclosed it on the prior application, although erroneous, was credible. The failure to disclose the conviction was certainly negligent. But, there is a difference between negligence and knowingly making a false statement. One knowingly makes a false statement when he or she does so with the intent to deceive. Respondent clearly did not intend to deceive the board about his conviction; he was negligent in filling out the application accurately. The applicable statute does not provide authorization to deny an application based on negligence alone.

ORDER

The application of respondent Mario Yeysen Vasquez for a field representative license in branch 3 is granted.

DATED: November 13, 2015

DocuSigned by:



19DED247706C4FB...

---

ADAM L. BERG  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2617  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

**FILED**

Date 7/14/15 By *Susan Saylor*

8  
9 **BEFORE THE**  
**STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
Against:

Case No. 2016-6

13 **MARIO YEYSEN VASQUEZ,**  
14 **AKA MARIO NAVA**

**STATEMENT OF ISSUES**

15 **Field Representative License Applicant**

16 **Respondent.**

17 Complainant alleges:

18 **PARTIES**

19 1. Susan Saylor (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of  
21 Consumer Affairs.

22 2. On or about April 13, 2015, the Structural Pest Control Board, Department of  
23 Consumer Affairs received an Application for a Field Representative License in Branch 3 from  
24 Mario Yeysen Vasquez, who is also known as Mario Nava (Respondent). On or about April 8,  
25 2015, Mario Yeysen Vasquez certified under penalty of perjury to the truthfulness of all  
26 statements, answers, and representations in the application. The Board denied the application on  
27 May 8, 2015.

28 ///

## JURISDICTION

3. This Statement of Issues is brought before the Structural Pest Control Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 8623 of the Code states:

(a) Notwithstanding Section 8620 or any other provision of law, the board may revoke, suspend, or deny at any time a license under this chapter on any of the grounds for disciplinary action provided in this chapter. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

....

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.



1 Any action that a board is permitted to take following the establishment of a  
2 conviction may be taken when the time for appeal has elapsed, or the judgment of  
3 conviction has been affirmed on appeal, or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under the  
provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

4 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
5 substantially benefit himself or herself or another, or substantially injure another.

6 (3)(A) Done any act that if done by a licentiate of the business or profession in  
question, would be grounds for suspension or revocation of license.

7 (3)(B) The board may deny a license pursuant to this subdivision only if the  
8 crime or act is substantially related to the qualifications, functions, or duties of the  
business or profession for which application is made.

9 (b) Notwithstanding any other provision of this code, a person shall not be  
10 denied a license solely on the basis that he or she has been convicted of a felony if he  
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing  
11 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
convicted of a misdemeanor if he or she has met all applicable requirements of the  
12 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) Notwithstanding any other provisions of this code, a person shall not be  
14 denied a license solely on the basis of a conviction that has been dismissed pursuant  
to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a  
15 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of  
the Penal Code shall provide proof of the dismissal.

16 (d) A board may deny a license regulated by this code on the ground that the  
17 applicant knowingly made a false statement of fact required to be revealed in the  
application for the license.

18 7. Section 482 of the Code states:

19 Each board under the provisions of this code shall develop criteria to evaluate  
20 the rehabilitation of a person when:

21 (a) Considering the denial of a license by the board under Section 480; or

22 (b) Considering suspension or revocation of a license under Section 490.

23 Each board shall take into account all competent evidence of rehabilitation  
furnished by the applicant or licensee.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a  
26 board within the department pursuant to law to deny an application for a license or to  
suspend or revoke a license or otherwise take disciplinary action against a person who  
27 holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties of the  
28 licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 8649 of the Code states:

6 Conviction of a crime substantially related to the qualifications, functions, and  
7 duties of a structural pest control operator, field representative, applicator, or  
8 registered company is a ground for disciplinary action. The certified record of  
conviction shall be conclusive evidence thereof.

9 10. Section 8655 of the Code states:

10 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
11 made to a charge substantially related to the qualifications, functions, and duties of a  
12 structural pest control operator, field representative, applicator, or registered company  
13 is deemed to be a conviction within the meaning of this article or Section 8568 of this  
14 chapter. The board may order the license or registration suspended or revoked, or  
15 may decline to issue a license, when the time for appeal has elapsed, or the judgment  
16 of conviction has been affirmed on appeal or when an order granting probation is  
made suspending the imposition of sentence, irrespective of a subsequent order under  
the provisions of Section 1203.4 of the Penal Code allowing the individual or  
registered company to withdraw a plea of guilty and to enter a plea of not guilty, or  
setting aside the verdict of guilty, or dismissing the accusation, information or  
indictment.

## 17 REGULATORY PROVISIONS

18 11. California Code of Regulations, title 16, section 1937.1 states:

19 For the purposes of denial, suspension or revocation of a license or company  
20 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a  
21 crime or act shall be considered to be substantially related to the qualifications,  
22 functions or duties of a licensee or registered company under Chapter 14 of Division  
3 of the code if to a substantial degree it evidences present or potential unfitness of  
such licensee or registered company to perform the functions authorized by the  
license or company registration in a manner consistent with the public health, safety,  
or welfare. Such crimes or acts shall include, but not be limited to, the following:

23 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

24 (b) Commission of any of the following in connection with the practice of  
25 structural pest control:

26 (1) Fiscal dishonesty

27 (2) Fraud

28 (3) Theft

1 (4) Violations relating to the misuse of pesticides.

2 12. California Code of Regulations, title 16, section 1937.2 states:

3 (a) When considering the denial of a structural pest control license or company  
4 registration under Section 480 of the Business and Professions Code, the board, in  
5 evaluating the rehabilitation of the applicant and his or her or its present eligibility for  
6 a license or company registration will consider the following criteria:

7 (1) The nature and severity of the act(s) or crime(s) under consideration as  
8 grounds for denial.

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
10 under consideration as grounds for denial which also could be considered as grounds  
11 for denial under Section 480 of the Business and Professions Code.

12 (3) The time that has elapsed since commission of the act(s) or crime(s)  
13 referred to in subdivision (1) or (2).

14 (4) The extent to which the applicant has complied with any terms of parole,  
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant.

17 ....

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 (February 14, 2013 Criminal Conviction for Theft on February 1, 2013)

20 13. Respondent's application is subject to denial under section 480, subdivisions (a)(1)  
21 and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the  
22 qualifications, duties, and functions of a Field Representative. Said conviction would be a ground  
23 for discipline under section 8649 of the Code for a licensed Field Representative. The  
24 circumstances are as follows:

25 a. On or about February 14, 2013, in a criminal proceeding entitled *People of*  
26 *the State of California v. Mario Y. Vasquez*, in San Diego County Superior Court, case number  
27 CS262575, Respondent was convicted on his plea of guilty to violating Penal Code section 484,  
28 theft, a misdemeanor, a count added to the complaint by interlineation. As a result of a plea  
agreement, the court dismissed the original charge of robbery (Pen. Code, § 459).

b. As a result of the conviction, Respondent was sentenced to summary  
probation for three years, and committed to the custody of the sheriff for 28 days, with pre-  
custody credit for 28 days. Respondent was ordered to submit to a Fourth Amendment waiver.

1           c.       The facts that led to the conviction are that on the afternoon of February 1,  
2 2013, Respondent was observed by security and surveillance entering a Banana Republic store at  
3 a San Ysidro outlet mall with what appeared to be an empty brown bag. Security observed  
4 Respondent select a jacket, remove it from its hanger, and place it in the bag. Respondent left the  
5 store without paying for the jacket. Respondent was intercepted by a loss prevention officer  
6 (LPO) outside of the store. When the LPO reached for Respondent's arm, Respondent shoved the  
7 LPO away and ran into a parking lot. Respondent was detained by the LPO until the San Diego  
8 Police Department arrived. During questioning, Respondent admitted he came into the store with  
9 the intention of stealing merchandise so he could sell it in Tijuana. Respondent was arrested.

## 10                               **SECOND CAUSE FOR DENIAL OF APPLICATION**

### 11           **(Making a False Statement of Fact Required to Be Revealed on the Application)**

12           14.   Respondent's application is subject to denial under Code section 480, subdivision (d)  
13 in that he made a false statement of fact required to be revealed in his application for licensure as  
14 a field representative. The circumstances are as follows:

15           a.    On or about April 8, 2015, Respondent signed his Application for Field  
16 Representative License (Branch 3) certifying under penalty of perjury under the laws of the State  
17 of California that his answers in the application were true and correct. Respondent was warned  
18 that any false information on the application could result in the denial of the application.

19           b.    Question 16 of the application asked:

20           Have you ever been convicted of, or plead guilty or nolo contendere to ANY offense  
21 in the United States or a foreign country? This includes every citation, infraction,  
22 misdemeanor and/or felony, including traffic violations. NOTE: Convictions that  
23 were adjudicated in the juvenile court or convictions two years or older under  
24 California Health and Safety Code section 11357(b), (c), (d), or (e) or section  
25 11360(b) should NOT be reported. Convictions that were later expunged from the  
26 records of the court or set aside pursuant to section 1203.4 of the California Penal  
27 Code or equivalent non-California law MUST be disclosed. (Minor traffic violation  
28 resulting in a fine of \$300.00 or less do not need to be disclosed.)

25           c.    In response to the question, Respondent checked the box "No," failing to  
26 disclose his February 14, 2013 criminal conviction for theft, even though the conviction met all  
27 criteria for disclosure. This conviction is detailed in the First Cause for Denial, paragraph 13,  
28 above, and is incorporated herein by reference.

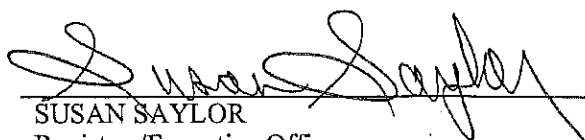
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Denying the application of Mario Yeysen Vasquez, also known as Mario Nava, for a Field Representative License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/14/15



SUSAN SAYLOR  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2015801436  
81094247.doc